

4206



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **LON/00AE/OLR/2016/0102**

**Property** : **First Floor Flat, 10 Windcott Court,  
Draycott Avenue, Kenton, Harrow,  
Middlesex, HA3 0BX**

**Applicant** : **Finchley Investments Ltd**

**Representative** : **Mr Denehan of Counsel**

**Respondent** : **Mr Emmanuel Cohen**

**Representative** : **Miss Bleasdale of counsel**

**Type of Application** : **Section 48 of the Leasehold  
Reform, Housing & Urban  
Development Act 1993**

**Tribunal Members** : **Judge I Mohabir  
Mr N Martindale FRICS**

**Date and venue of  
Hearing** : **24 May 2016  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **19 July 2016**

---

**DECISION**

---

## ***Introduction***

1. This is an application made by the Applicant under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) (“the Act”) for a determination of the premium to be paid for an extended lease of First Floor Flat, 10 Windcott Court, Draycott Avenue, Kenton, Harrow, Middlesex, HA3 0BX (“the property”).
2. By a Notice of Claim dated 19 May 2015 served pursuant to section 42 of the Act, the former leaseholder, Laneside Properties Ltd, exercised the right to the grant of a new lease of the property. The proposed premium was £81,465. The notice was assigned to the Applicant by a Deed of Assignment dated 22 May 2015.
3. By a counter notice dated 30 July 2015 served pursuant to section 45 of the Act, the Respondent admitted the Applicant’s right to acquire a new lease and counter proposed a premium of £157,000. The Respondent also proposed a number of modifications to the terms of the new lease.
4. The parties were unable to agree the premium to be paid for the new lease or the terms of the new lease and the Applicant issued this application for the Tribunal for this determination to be made.

## ***Decision***

5. The hearing in this matter took place on 24 May 2016. The Applicant was represented by Mr Denehan of Counsel. The Respondent was represented by Miss Bleasdale of Counsel.

## ***Preliminary Issue***

6. At the commencement of the hearing, the Tribunal was obliged to rule on a preliminary issue, namely, whether the Applicant’s valuer, Mr Shapiro, had in fact agreed the value of the existing lease with the Respondent’s valuer, Mr Gilmartin.

7. Both valuers had prepared and signed a statement of agreed facts and disputed issues dated 16 March 2016. The last paragraph of the agreed facts expressly stated that:

*“The purchase price of the flat of £70,000 paid on 22 May 2015 and an allowance to get to the ‘no Act world’ of 24.56% and, therefore, an existing leasehold value at the valuation date of £52,808.”*

8. At the hearing, Mr Shapiro sought to resile from that statement and contended that he had not in fact agreed the existing leasehold value of the flat at all.
9. Having heard evidence from Mr Shapiro, the ruled that he had agreed with Mr Gilmartin that the existing leasehold value in the sum of £52,808. The Tribunal did so for the following reasons.
10. Somewhat surprisingly, the statement of agreed facts had been prepared before the valuation report had either been prepared or served by either valuer. Having carefully considered the matter, the Tribunal did not accept the evidence of Mr Shapiro that the existing leasehold value of £52,808 was qualified and subject to a consideration of relativity.
11. Mr Shapiro appears as an expert to give valuation evidence on a regular basis. He is well aware as to the nature and effect of agreeing a statement of facts and that, in doing so, both valuers are bound by the terms of that agreement.
12. The Tribunal was satisfied that at no stage after agreeing the statement of facts did Mr Shapiro seek to strike out or qualify the offending paragraph as to the existing leasehold value. Indeed, in subsequent without prejudice correspondence with the Respondent’s valuer, Mr Shapiro maintained the stance that the existing leasehold value was £52,808 to which a relativity figure had to be applied. He made various

proposals using this methodology. Again, he did not seek to qualify this approach in any way.

13. The Tribunal was, therefore, satisfied that Mr Shapiro intended to be fully bound by the existing leasehold value of £52,808 because it presented an opportunity for his client to acquire a new lease at what would be an advantageous premium. It was not until on or about 9 May 2016 when the freehold vacant possession value was agreed that Mr Shapiro realised his client's position had been prejudiced by having earlier agreed the existing leasehold value at the lower figure and he then sought, understandably, to resile from the agreed figure.
14. In conclusion, the Tribunal found that Mr Shapiro was bound by the existing leasehold value of £52,808 for the purpose of this application.
15. Having ruled on this point, the Tribunal was then told that the freehold vacant possession value had been agreed at £248,500. Therefore, the premium to be paid by the Applicant for the new lease was now also agreed in the sum of £138,211.

### ***Lease Terms***

16. The only remaining issue before the Tribunal was the terms of the new lease and, specifically, whether the the additional terms proposed by the Respondent in the counter notice should be included in the new lease.
17. The amended terms sought by the parties are:
  - (a) the Respondent contends for the deletion of clause 5 entirely.
  - (b) the Applicant seeks a modification of the First Schedule to provide the express grant of rights of ingress and egress over the landlord's adjoining premises to and from the property and the adjoining public highway.
  - (c) the Applicant seeks a replacement of clause 2(13) with a modified buildings insurance clause.

- (d) the deletion of clause 4(b) and replacing it with a new clause requiring the tenant's interest to be noted on any buildings insurance policy taken out by the landlord.
- 

These amendments are more fully set out in the 'Rider' annexed hereto.

- 18. It is trite law that the Act requires a landlord to grant a new lease on the same terms as the existing lease when the claim notice under section 42 is given, save for the rent and the term. In the absence of agreement by the parties, the only basis on which the Act permits the terms of the new lease to be modified is if one or more of section 57(1) to (6) applies. The burden of proof is on the party seeking the modification.
- 19. Having heard submissions from Counsel for both parties, the Tribunal was satisfied that none of the modifications to the new lease sought by the parties fell variously within sections 57(1) to (6) of the Act.
- 20. By seeking to delete clause 5 of the existing lease, the Respondent was seeking to relieve himself or his tenant of the joint repairing obligation created by the clause and no more. The clause could, therefore, not be described as being defective or that its continued inclusion would be unreasonable without modification within the meaning of section 57(6)(a) or (b) of the Act.
- 21. The rights granted in the First Schedule of the existing lease are in relation to Flat 9, being non-demised property. Whilst the First Schedule does not expressly grant a right of access to and from the property, the Tribunal accepted the submission made by Counsel for the Respondent that since the lease was granted in 1954, an implied easement or prescriptive right had arisen. This was accepted by Counsel for the Applicant. Again, this proposed modification did not fall within section 57(6) generally and, in any event appears to be covered by section 62 of the Law of Property Act 1925 (as amended).

22. The proposed modifications to clauses 2(13) and 4(b) can be taken together, as they both relate to the insuring obligations under the lease. Once again, the Tribunal could see no basis upon which the clauses in the new lease required to be modified as proposed by the Applicant. The existing clauses could not be said to be defective and/or unreasonable within the meaning of section 57(6) or otherwise. It appears to be an attempt to update the insuring clauses in the new lease with a more modern form of words. However, in the absence of agreement from the Applicant, this is not permitted under the Act.
  
23. Accordingly, the Tribunal determined that the new lease is to be granted on the same terms without modification, save for the rent and the term and any other terms agreed by the parties.

Judge I Mohabir

19 July 2016

RIDER

1. The First Schedule to the Lease shall be modified by insertion of the words "a right of access to and from the property to the adjoining public highway Windermere Avenue and further" immediately after the words "TOGETHER ALSO" on the fourth line thereof.

2. Clause 2(13) of the Lease shall be modified by deletion in its entirety and replaced by the following clause:-

2(13) "To insure and keep insured the said premises against loss or damage by fire and all risks usually covered by a Building Owners Comprehensive Policy in a well known insurance office in the United Kingdom to the full value thereof with the interest of the Lessor duly noted thereon and to produce to the Lessor or his agent on demand a copy of such policy of insurance and the receipt for the premium paid in respect thereof and to cause or procure that all monies received by virtue of any such insurance to be forthwith laid out in the re-building and reinstatement of the said premises and for any deficiency to be made good."

3. Clause 4.(b) shall be modified by deletion in its entirety and replaced with the following:-

4.(b) "To procure that the said Maisonette 9 Windcott Court and its appurtenances be insured against loss or damage by fire and all risks usually covered by a Building Owners Comprehensive Policy in a well known insurance office in the United Kingdom to the full value thereof with the interest of the Lessee duly noted thereon and to produce to the Lessee or his agent on demand a copy of such policy of insurance and the receipt for the premium paid in respect thereof and to cause or procure that all monies received by virtue of any such insurance to be forthwith laid out in the re-building and reinstatement of the said premises and for any deficiency to be made good."

4.  
**SIGNED AND DELIVERED** as a Deed by the said  
**FINCHLEY INVESTMENTS LIMITED** a company duly  
incorporated in and according to the Laws of the Territory of Gibraltar by  
**ROHIT LAXMIDAS DAVDA** being a Director in the company and a person who in  
accordance with the Laws of that Territory is acting under the  
authority of the company:

.....  
Authorised Signatory